

SACCHETTA & BALDINO  
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Attorney for Plaintiff

JESSE OLEKSZA

Plaintiff

v.

GOULD & GOODRICH, INC. and  
MARKL SUPPLY COMPANY a/k/a  
MARKL SUPPLY CO.

Defendants

: IN THE COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY  
: CIVIL ACTION - LAW  
:

: APRIL TERM, 2014, NO. 004069  
:  
:

PLAINTIFF'S PRETRIAL MEMORANDUM

I. Summary of the Case

On June 7, 2012, plaintiff, Jesse Oleksza, a Pennsylvania State Trooper, suffered serious and permanent bodily injury when his holstered Glock-37 duty pistol discharged. A 45-caliber bullet struck his thigh then entered his lower leg. The bullet lodged in plaintiff's ankle after transecting the peroneal nerve.

On the date of the incident, plaintiff returned to the Belfast State Police barracks after his tour of duty, parked his patrol vehicle in a designated lot and exited and rounded the car. He was in full uniform, wearing his State-Police-issued duty belt and holster. The Gould & Goodrich HHR double retention holster was situated on his right hip; the Glock-37 semiautomatic pistol was in the holster, properly placed, seated and secured. As plaintiff entered the vehicle through the passenger side door, intending to retrieve his duty shotgun and bag, he was holding a set of keys in his hand. Another set of keys was attached to the duty bag and a third set was attached to a keeper on the duty belt, forward of the holstered pistol.

As Mr. Oleksza was backing out of the vehicle, the holstered firearm discharged. His immediate thought was that the shotgun had discharged. In fact, he reported that to other

troopers who came to his assistance. After the shooting, he fell to the ground, bleeding. It was pointed out to him that in fact, his sidearm had discharged. All troopers who responded to the scene (of which there were many) have confirmed in statements and depositions that plaintiff's pistol was holstered, secured and properly seated in the subject Gould & Goodrich double retention holster.

A full State Police internal affairs investigation cleared Mr. Olseksza of any wrongdoing and any responsibility for the discharge of his firearm. A comprehensive Pennsylvania State Police Bureau of Forensic Services laboratory analysis and evaluation confirmed that due to the design of defendant's holster, the holstered firearm could be discharged by inserting a vehicle ignition key into the holster from the right side and exerting rearward pressure on the trigger.

Defendants are Markl Supply Company, a Pennsylvania-based police equipment supplier that supplied the subject holster to the Pennsylvania State Police, and Gould & Goodrich, Inc., the designer, manufacturer and supplier of the holster.

## II. Witnesses

- Jesse Oleksza
- Michael Martin Cohen, M.D.
- Scott Levin, M.D.
- Karl Rosenfeld, M.D.
- Jeffrey Malumed, M.D.
- John Bassani, P.E.
- John Finor
- Krystal Oleksza
- Trooper Terrance Merante

- Sgt. Douglas Shook
- Cpl. Gerard Walsh
- Trooper Adam Frankelli
- Trooper William Books
- Trooper Jay Splain
- Trooper Michael Kalinchock
- Trooper Paul Hulbert
- Trooper Seth Kelly
- David Watson
- Cpl. David Krumbine
- William Landon
- Marshall Schmitt
- Captain Patrick Brinkley
- Lt. Gerhardt Wendt
- Trooper Daniel McGough
- Scott Nelson
- Don Vaverchak (Security Electronics Associates, Inc.)
- Cpl. Kreg Rodrigues
- Mike Favazza
- Benjamin Hamilton
- Walter Margeson
- Jennifer Oleksza
- David Pallone

- Juan Ramirez
- Patrick Brogle, M.D.
- Robert Mauthe, M.D.
- Scott Naftulin, M.D.
- any and all witnesses listed by defendant
- any and all witnesses identified through the course of discovery
- any and all witnesses necessary for impeachment or rebuttal

### III. Exhibits

1. Pa. State Police Internal Affairs Division Investigative Report
2. Pa. State Police Ballistic Report (including all items identified as 1-4.4)
3. all documents produced by Pennsylvania State Police in response to subpoena, identified by Bates stamp nos. 1-1417
4. Workers' Compensation & Heart & Lung statements of lien
5. anatomical diagrams, models or illustrations
- 6-35. exemplar holsters
- 36-45. exemplar handguns
- 46-55. exemplar training weapons
56. expert report & *curriculum vitae* of Michael Martin Cohen, M.D.
57. expert report & *curriculum vitae* of Scott Levin, M.D.
58. expert report & *curriculum vitae* of Karl Rosenfeld, M.D.
59. expert report & *curriculum vitae* of Jeffrey Malumed, M.D.
60. expert report & *curriculum vitae* of John Bassani, P.E.
61. expert report & *curriculum vitae* of John Finor

62. photographs taken by John Bassani, P.E.
63. photographs taken by John Finor
64. video taken by John Bassani, P.E.
65. video taken by John Finor
66. photographs depicting plaintiff's injuries
67. all medical equipment, supports, braces and devices used by plaintiff during rehabilitation
68. Pennsylvania State Police Internal Investigation Review & Conclusion, 10/12/12
69. medical bills, records & reports of Dr. Brogle
70. medical bills, records & reports of Robert Mauthe, M.D.
71. medical bills, records & reports of Scott Naftulin, M.D.
72. subpoenaed records of Inservco Insurance Co.
73. medical bills, records & reports of Scott Levin, M.D.
74. medical bills, records & reports of Shoemaker Chiropractic
75. medical bills, records & reports of Steven Sherer, M.D.
76. subpoenaed records of Evangelical Community Hospital
77. subpoenaed records of Geisinger Shamokin Area Community Hospital
78. subpoenaed records of Dr. James Philson
79. subpoenaed records of Community College of Allegheny
80. subpoenaed records of Geisinger Medical Center
81. plaintiff's Interrogatories to defendant Markl with answers thereto
82. plaintiff's Request for Production of Documents to defendant Markl with response thereto

83. plaintiff's Interrogatories to defendant Gould & Goodrich with answers thereto
84. plaintiff's Request for Production of Documents to defendant Gould & Goodrich with response thereto
85. subpoenaed records of Luzerne County Community College
86. subpoenaed records of Our Lady of Lourdes
87. subpoenaed records of Pennsylvania Institute Neurological Disorders
88. any and all exhibits listed by defendant
89. any and all exhibits necessary for impeachment or rebuttal

#### IV. Damages

Since the date of the incident, plaintiff has received continuous, ongoing medical treatment, resulting in a workers' compensation lien for payment of reasonable and necessary medical bills in the amount of \$175,539.12.

Plaintiff was completely out of work for an extended period of time. He returned to light-duty desk work and after a period of years was able to return to his full tour of duty. The workers' compensation carrier has paid indemnity benefits in the amount of \$61,034.67. Indemnity benefits paid under the Heart & Lung Act equal \$22,071.37, resulting in a total lien in the amount of \$258,644.86.

Plaintiff was transported by ambulance from the scene of the incident to St. Luke's Hospital in Bethlehem, where he was admitted and observed for potential compartment syndrome. The decision was made at St. Luke's to not remove the bullet. It was decided that plaintiff would seek treatment at the Hospital of the University of Pennsylvania with orthopedic foot and ankle specialist Scott Levin, M.D. In late June, 2012, plaintiff was admitted for surgical removal of the bullet and nerve grafting to repair the transected peroneal nerve injury. After

surgery, Mr. Oleksza remained in a long leg case for two weeks, and thereafter employed a series of braces. He endured a lengthy course of in-home physical therapy, during which time he was confined to the first floor of his home. He engaged in an extensive course of out-patient physical therapy with the goal of restoring function of his right lower extremity.

Plaintiff suffered significant lower extremity scarring as a result of the gunshot wound and subsequent surgery.

From both the physical and neurologic standpoint, the road to recovery has been long. From 2012 and into 2013, Mr. Oleksza was unable to fully use his right leg and foot. He had continuing weakness and was unable to dorsiflex his ankle. By mid-2013, he was able to return to work three days per week for four hours per day. When last seen by Dr. Levin in March of 2014, plaintiff suffered continued paresthesia of the right lower leg. Despite a remarkable recovery from a serious nerve injury, Mr. Oleksza continued to suffer from pain, numbness and loss of sensation in the right lower extremity. Dr. Levin opined that the patient would have some permanent disability, but felt that Mr. Oleksza would be able to return to his previous employment.

As time progressed, plaintiff began to note significant left hip pain resulting from his gait disturbance. He undertook a course of treatment with Patrick Brogle, M.D., a board-certified orthopedic surgeon affiliated with St. Luke's Hospital. Dr. Brogle was of the opinion that plaintiff had suffered a contralateral (left hip) compensation injury, including injury to the labrum, which might require surgical intervention.

Plaintiff sought a second opinion from Jeffrey Malumed, M.D., a board-certified orthopedic surgeon, who was of the opinion that plaintiff had a probable labral tear. An MRI arthrogram of the left hip done in 2015 noted that the left hip pain hampered Mr. Oleksza's

ability to engage in normal activities. It was recommended that he return to HUP for consideration of left hip arthroscopic surgery on the torn labrum.

In January of 2016, plaintiff was evaluated by Karl Rosenfeld, M.D., a board-certified orthopedic surgeon, for both his left lower leg and right hip problems. Dr. Rosenfeld noted that while Mr. Oleksza had made a remarkable recovery from a potentially devastating injury, he did continued to have complaints related to both the original injury and the left hip. It was Dr. Rosenfeld's opinion that plaintiff's complaints of pain, numbness and tingling in the right lower extremity would be permanent and little could be offered, as no additional surgery would help. Dr. Rosenfeld noted that Mr. Oleksza was then 31 years old and had had no problems with his hip before the shooting incident. The doctor attributed the hip problems to plaintiff's putting more weight on the hip after the shooting injury. Dr. Rosenfeld recommended that Mr. Oleksza not get any more cortisone shots, as they might be counterproductive and cause deterioration of the cartilage. He noted that all medical care and treatment given to plaintiff through the date of his evaluation was reasonable and necessary and related to the gunshot wound.

In January of 2016, plaintiff was evaluated by Michael Martin Cohen, M.D., a board-certified neurologist. It was Dr. Cohen's impression that 1) Mr. Oleksza had suffered a gunshot wound to the right lower extremity with transection of the peroneal nerve, 2) status post-bullet removal, decompression, and nerve graft, 3) residual pain, weakness, and numbness of the right lower extremity, and 4) secondary bilateral hip pain and low back pain associated with ambulatory dysfunction due to traumatic peroneal neuropathy. All of these injuries were caused by the gunshot incident of June 7, 2012. It was Dr. Cohen's opinion that the prognosis for full recovery was poor, and further, that all medical care and treatment was reasonable and necessary.



At this juncture, plaintiff at 32 years old is left with permanent, disfiguring injury as a result of this incident.

IV. Current Demand: \$3.5 million Offer: none

It has been represented that a primary level of insurance coverage exists for the product manufacturer, Gould & Goodrich, in the amount of one million dollars, and that there is excess insurance coverage. Plaintiff is willing to discuss the potential for settlement only after the primary limit of coverage is tendered.

V. Estimated Length of Trial 7-10 days

VI. Reports Attached

A. Michael Martin Cohen, M.D.

B. Scott Levin, M.D.

C. Karl Rosenfeld, M.D.

D. Jeffrey Malumed, M.D.

E. John Bassani, P.E.

F. John Finor

G. Pa. State Police Ballistic Report

/s/  
GERALD B. BALDINO, JR., ESQUIRE  
Attorney for Plaintiff